



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2005

Mr. Asem Eltiar
Assistant City Attorney
City of Arlington
P.O. Box 1065 Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2005-03019

Dear Mr. Eltiar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221533.

The Arlington Police Department (the "department") received a request for information relating to a named individual, including records pertaining to a specific report number. You indicate that the department has released some of the requested information. You claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state

does not. See *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

The present request is for "any and all reports related to [the named individual]," including information relating to the specified report "and any other reports you may have." To the extent that this request is for unspecified law enforcement information, it implicates the named individual's right to privacy. Therefore, to the extent that the department maintains any information other than the specified records that relates to the named individual as a criminal suspect, arrestee, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

The common-law right to privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since determined that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked private information that the department must withhold under section 552.101.

Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of public employee personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked private personal financial information that must also be withheld under section 552.101.

Section 552.101 also encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information

Center or the Texas Crime Information Center is confidential under federal and state law.¹ Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See id.* at 10-12; *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). Although you assert that the submitted information contains CHRI, we conclude that none of the remaining information is confidential under the federal law or subchapter F of chapter 411 of the Government Code. Therefore, the department may not withhold any of the remaining information on that basis under section 552.101.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

¹Criminal history record information means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). The statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the “DPS”) under subchapter C of chapter 521 of the Transportation Code. *Id.*

Fam. Code § 261.201(a). Some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. That information, which we have marked, falls within the scope of section 261.201(a). You do not indicate that the department has adopted a rule that governs the release of the marked information. We therefore assume that no such rule exists. Given that assumption, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

We note that the remaining information includes social security numbers. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. We caution you, however, that the Act imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department under any provision of law enacted on or after October 1, 1990.

We also note that section 552.130 of the Government Code is applicable to some of the remaining information.² This section excepts from disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification documentation issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Section 552.130(a)(1) is applicable to information that relates to a Texas motor vehicle operator's or driver's license or permit. Section 552.130(a)(2) is applicable to information that relates to a Texas motor vehicle title, vehicle registration, or vehicle identification number. Section 552.130(a)(3) is applicable to information that relates to a personal identification document issued by an agency of the State of Texas or a local

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001)(mandatory exceptions).

agency in this state. We have marked Texas driver's license, motor vehicle, and personal identification information that the department must withhold under section 552.130.

In summary: (1) to the extent that the department maintains any unspecified law enforcement information that relates to the named individual as a criminal suspect, arrestee, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code; (2) the department must withhold the information that is protected by common-law privacy under section 552.101; (3) the department must withhold the personal financial information that is private under section 552.101; (4) the department must withhold the information that is confidential under section 552.101 in conjunction with section 261.201 of the Family Code; (5) the department may be required to withhold the social security numbers under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (6) the Texas driver's license, motor vehicle, and personal identification information must be withheld under section 552.130. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

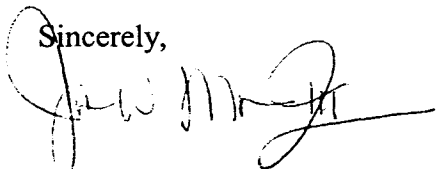
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', written over a circular stamp.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 221533

Enc: Submitted documents

c: Ms. Robyn Bond
Professional Investigators & Associates
2601 Airport Freeway, Suite 500
Fort Worth, Texas 76111
(w/o enclosures)